

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITR Nos.26 to 29 of 1989
Date of decision:22.12.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

Shri Ved Parkash Aggarwal, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.
Mr. Rakesh Bakshi, Advocate for the respondent-assessee.

JUDGMENT:

Following question has been referred for the opinion of this Court by the Income tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order in ITA Nos.11 and 146/Chandi/85, for the assessment year 1981-82 and ITA Nos.759 and 996/Chandi/85, for the assessment year 1982-83:-

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that expenditure on dinners and lunches served to foreign guests was not in the nature of entertainment expenses?”

The assessee claimed deduction on account of expenses incurred on dinners and lunches served to foreign guests as under:-

1980-81	Rs.59706/-
1981-82	Rs.58856/-
1982-83	Rs.103945/-
	Rs.9890/-
	Rs.21351/-

The same was disallowed by the Assessing Officer relying upon Section 37 (2A) of the Income tax Act, 1961 (for short, 'the Act'). The CIT(A) partly allowed the appeal with the following observations:-

“10. After considering the facts and circumstances of the case, I would hold that in view of the Punjab and Haryana High Court's judgment referred to by the ITO, the expenses on dinners and lunches hosted to foreign customers were in the nature of entertainment expenditure and would be hit by the provisions of Section 37(2A). Mere rejection of SLP by the Supreme court in another case where the expenditure of similar nature was held by the High Court as admissible would not by itself amount to a decision of the Supreme Court on the point at issue. Each case has to be decided on the facts and circumstances obtaining therein and a rejection of the SLP by the Supreme Court on the facts and circumstances of a particular case cannot be said as laying down the law on the subject. I would, however, uphold the assessee's contention that the expenditure to the extent of Rs.15,244/- does not partake the character of entertainment expenditure and the same is, therefore, clearly admissible as business expenditure in view of the ITAT's decision referred to by the assessee's AF. Similarly, Rs.500/- representing the cost of photographs will not partake the character of entertainment expenditure and the same is admissible as business expenditure. The remaining amount of Rs.54708/- minus Rs.15,744/- equal to Rs.38,964/- has, of course, been correctly disallowed as constituting in admissible entertainment expenditure in view of the Punjab and Haryana High Court's judgments referred to above. This ground of appeal, therefore, partly succeeds”.

This view was upheld by the Tribunal relying upon Explanation 2 added to Section 37(2A) of the Act, vide Finance Act, 1983 w.e.f 1.4.1976.

The total deduction allowed upto the Tribunal was as under:-

1980-81	Rs.45744/-
1981-82	Rs.49856/-
1982-83	Rs.109186/-

We have heard learned counsel for the revenue and perused the record.

At the relevant time, provision of Section 37(2A) of the Act was as under:-

“37(2A). Notwithstanding anything contained in sub-section (1) or sub-section (2), no allowance shall be made in respect of so much of the expenditure in the nature of entertainment expenditure incurred by any assessee during any previous year which expires after the 30th day of September, 1967, as is in excess of the aggregate amount computed as hereunder:-

- (i) on the first Rs.10,00,000 of the profits and gain of the business or profession (computed before making any allowance under section 32A or section 33 or section 33A or in respect of entertainment expenditure)

at the rate of 1/2 per cent or Rs. 5000, whichever is higher;
- (ii) on the next Rs.40,00,000 of the profits and gains of the business or profession. (computed in the manner aforesaid)

at the rate of ¼ per cent;
- (iii) on the balance of the profits and gains of the business or profession (computed in the manner aforesaid)

at the rate of 1/8 per cent,

so, however, that the allowance shall in no case exceed Rs.50,000.”

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“**Explanation 2** – For the removal of doubts, it is hereby declared that for the purposes of this sub-section and sub-section (2B), as it stood before the 1st day of April, 1977, “entertainment expenditure” includes expenditure on provision of hospitality of every kind by the assessee to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade, but does not include expenditure on food or beverages provided by the assessee to his employees in office, factory or their place of their work.”

The Tribunal held that service of lunches and dinners to foreign guests did not amount to expenditure even for purposes of Explanation.
We find that the issue has already been gone into by this Court

in **H.M.M.Limited v. CIT**, (1998) 231 ITR 726 and **Avon cycles Private Limited v. CIT**, (1999) 238 ITR 85, wherein referring the judgment of Hon'ble the Supreme Court in **CIT v. Patel Brothers and Co. Limited and others**, (1995) 215 ITR 165, the expenses of the kind have been held to be entertainment.

Accordingly, following the same view, we hold that expenses on service of lunches and dinners to foreign guests amounts to entertainment.

The question is, thus, answered in favour of the revenue and against the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

December 22, 2006
'gs'

(Rajesh Bindal)
Judge